

THE ELEMENTS OF CRIMINAL LAW.

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CONTENTS.

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Chapter.				Page.
I	1
II	4
III	10
IV	12
V	18
VI	22
VII	26
VIII	30
IX	32
X	33
XI	39
XII	43
XIII	46
XIV	49
XV	52

— — —

ERRATA.

PAGE.	LINE.	FOR	READ.
3	2	cosultation	consultation
3	17	immemorial	time immemorial
3	22	like	little
4	19	CAAPTER	CHAPTER
6	9	it	is
8	19	offence which	offence in which
8	23	apponited	appointed
13	13	intend	intent
20	11	informity	infirmity
20	20	limit	limb
21	1	the	a
25	7	If person	If a person
27	24	commit	commits
30	9	property destroyed	property is destroyed
33	14	its	his
36	22	pusnished	punished
46	2	ard	and
45	17	or sum nans	a summons
47	1	offences	offence

CHAPTER I.

What is Law ?

Every law is a command. It proceeds from persons possessing power to those who are under their authority and obliges them to do or to forbear from a class of acts, and threatens them with evil if it is disobeyed.

If the Government commands that no one shall steal a thing, the order is law. But if a person orders his servant to clean his room every day, it is not a law, because the order refers to a particular individual and to a special act. Acts or forbearances of a class are ordered generally by a law, while acts of a specific nature are ordered or forbidden by an order.

The evil or punishment to be borne by a person disobeying a command is called a sanction.

How are laws made in India ? ✓

In India laws for the whole of India are made by a Council of State in which the Governor-General, presides and a Legislative Assembly; while local laws are made by the

Legislative Councils of the different presidencies, presided over by their respective Governors.

A law is placed before the Councils and the Assembly in the form of a Draft which is published for public information and discussion. It is then introduced for discussion in the Councils and the Assembly and becomes a 'Bill' and when it is passed by them it becomes an Act. or *Law*.

∴ The assent of the Governor-General to any law is necessary whether or not he has been present in Council at the time it was made. Sometimes the Governor-General withholds his assent and submits the law to know the pleasure of His Majesty the King on it, which is communicated to him through the Secretary of State for India in Council.

In England laws are made by the Parliament and the King.

What are the sources of law in India? ✓

1. The acts of Parliament referring to India,

2. The laws passed by the Governor-General in consultation with the Council of State and the legislative assembly.

3. The laws passed by the Governors-in-Council.

4. Religion.

5. Custom.

6. The decisions of the High Court.

7. The decisions of the Privy Council.

Laws commonly grow out of customs for in the early stages of society they hold the society together. Customs have greater authority than laws, for laws can be repealed while customs cannot be altered. But customs to have the force of laws should be so old as to be incapable of being traced to their origin. They should have continued from immemorial. They derive their obligatory force from public opinion.

How are laws made in the Native States?

The chiefs adopt the laws made in British India, and with a ~~like~~ change to suit the condition of their subjects give them cur-

rency in their jurisdiction. The advanced states have introduced the institution of Legislative Councils for making laws for their States. But the ruler reserves the power of vetoing the laws passed by the Council. Jurisdiction is the territory under the administrative powers of either a court, or a Government, or a State.

What is Equity ?

It means 'Justice' in its broad sense; and came into existence to correct or mitigate the rigour of law. The Courts refused to interpret the law according to the changes which took place in opinion and in the circumstances of society; and it made the law appear harsh and unreasonable. To do Justice according to the natural law in these circumstances "equity" was introduced.

CHAPTER II.

Why is Law necessary ?

Every person ought to know his right and duty towards others, so that Society

//, may work without any hindrance or difficulty.
By means of law information about right
and duty is published. Law further serves
the purpose of punishing the wicked mem-
bers of the Society who harm the property
or person of the other members. Without
law Society will be thrown into utter con-
fusion and the idea of private property
disappear. *vanish*

Into what main classes is law divided? ✓

Law is divided into two classes.

(1) The substantive law and (2) the
adjective law. *about helps*

The substantive law deals with the rights
and duties while the adjective law deals with
the procedure by which rights and duties may
be enforced. It is further divided into (1) the
Criminal Law and (2) the Civil Law on
the basis of the interest affected being 'public'
or 'private'. Crimes are called 'public' wrongs
because they affect the interest of the whole
community. Civil injuries are called 'private
wrongs' because they affect particular indivi-

duals. In the case of crimes the crown retains the prosecution in its own hands while in the case of Civil injuries the party that is wronged seeks the assistance of law. The Criminal law is also called the Penal law because it punishes crimes. The Criminal law represses crimes while the Civil law settles the rights and duties. The Criminal law looks back that it punishes the crime when it has been done and the civil law looks forward that it provides beforehand protection for the rights of the individual. For example the offence of theft falls under the criminal law: because it affects the public. If thefts were not punished property will not be safe, and nobody will consider it worth his while to work to acquire it. Without property there will be no society and without society there will be no ruling authority. Therefore the Crown takes the prosecution for offences into its own hands and does not leave it to the party injured. But in civil injuries such as the non-payment of money due, the Crown does not interfere; and the party that feels injured goes to law. In such cases the injury or

harm is private and affects only the persons concerned. ✓

Why is law codified ?

General rules; having the force of law come into existence one by one and without a system. With the growth of society, these rules multiply and become numerous so that it becomes difficult to know the law on any subject. Codification arranges these rules in a systematic manner and simplifies them so that it becomes easy to find out the law on any point when necessary. Under the British Government in India the laws, applicable to Europeans and Indians were ascertained, consolidated and amended under the guidance of Lord Macaulay in 1833, and arranged in different Codes. In 1853 the Penal Code and the Criminal Procedure code and the Civil Procedure Code came into existence. These Codes give uniform general laws for all classes of persons. No attempt was made to enact Civil Code because it was not possible to systematise and arrange the innumerable rights and duties of private persons which affect their daily life.

The Penal Code—defines offences and prescribes punishments for them—**The Criminal Procedure Code**—lays down the method by which an offender is brought before the courts of justice and the manner of his trial. It contains a useful appendix which points out the nature of crime, the court by which it is triable, whether it is bailable or non-bailable compoundable or non-compoundable cognisable or non cognisable and is to be started by the issuing of summons or warrant. **The Civil Procedure Code**—lays down rules which a person seeking assistance of a civil court to enforce his private right has to observe, and according to which a Civil Court must needs continue the hearing of the case before it.

“Bailable offence”—Means an offence which on the furnishing of a personal security or the deposit of money an offender is given his liberty, with a condition that he will present himself before the court on the appointed day.

Summons—is issued in cases relating to offences which are not punishable with death

transportation or imprisonment for a term exceeding 6 months; and where the offences are so punishable a warrant is issued.

Compoundable offences—are those offences in which the parties have the right to settle their differences among themselves *e. g.*, the offences of assault and defamation.

Cognisable—offences are those in which the Police can interfere without complaint from a party and arrest without warrant. ^{result a case} ~~let~~ ^{case}

Which branch of law is it more important for a ruler to know ?

A ruler promises his subjects safety of person and property. He must therefore know well the Penal Code in order to understand the gravity of the offences that harm the person and the property of his subjects and obstruct his administration. He must also study carefully the Criminal Procedure Code to be able to supervise the work of his officers engaged in criminal work and of the Magistrates. ✓

CHAPTER III.

✓ In the Penal Code offences have been first divided into classes and then defined. By classification all offences that possess the common attribute are constituted into a class *e.g.*, (1) offences affecting the human body and (2) offences against property. Under the first class are included, murder hurt, assault as each one of them has to do with the human body and in the second, Theft; Robbery; cheating as each one of them has to do with property. By definition each member of a class is distinguished from the other members constituting it by a peculiar mark which is its own and is absent in the other members. ✓

The Penal Code defines an offence and prescribes a maximum punishment for it, but leaves the ascertaining of the circumstances which make an offence serious or less serious to the magistrate. For example it defines the offence of theft, and prescribes 3 years imprisonment as punishment for it. It does not take into consideration the

circumstances which may make the offence of theft less serious, as in the case of theft of grain during the famine time but leaves the matter to the magistrate who gives a light or heavy punishment according to the facts of the case.

The Penal Code divides offences into the following classes:—

(1) offenses affecting the human body *namely*, viz. Assault; Criminal Force; Hurt; Murder; wrongful restraint; wrongful confinement.

(2) offenses against minors and women viz., kidnapping; abduction. *Carrying*

(3) offenses against property viz. Theft; *money by force* Extortion; Robbery; *being away* criminal misappropriation; *or another's property* criminal breach of trust; Receiving stolen property; Cheating; Mischief; criminal trespass; House-trespass; House-breaking; *in which there is no loss of property* Dacoity; *you a*

(4) offenses of falsification viz. Fabricating false evidence; Giving false evidence; Forgery.

(5) offences affecting the mind *viz.*
 ~ Defamation; criminal int/imida-
 tion.

(6) offences against the State (Govern-
 ~ ment) *viz.*, sedition; riot; affray;
 ~ ~ ~ unlawful assembly. 677

(7) offences by or relating to Public
 ~ servants, *viz.* Taking an illegal
 ~ ~ gratification in respect of an
 ~ official act.

CHAPTER IV.

Definitions.

1. 'Moveable property' includes cor-
 ~ poreal property of every description, except
 ~ land, and things attached to the earth.

✓ 2. 'Wrongful gain' is gain by unlaw-
 ~ ful means of property to which the person
 ~ gaining is not legally entitled: it includes
 ~ retaining wrongfully as well as acquiring
 ~ wrongfully.

... 'Wrongful loss' is the loss by unlawful means of property to which the person losing it is legally entitled: it includes wrongfully keeping out of any property as well as being wrongfully deprived of it.

3. 'Dishonestly'—whoever does any thing with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that dishonestly.

4. 'Fraudulently' A person is said to do a thing fraudulently if he does it with intend to defraud. To defraud is to deceive, whether from any expectation of advantage to the party deceiving or from ill-will towards the other party.

✓5. 'Voluntarily' when a person causes an effect by means whereby he intended to cause it or which he know would likely cause it, he is said to cause it 'voluntarily.'

6. 'Counterfeit' A person is said to counterfeit who causes one thing to resemble another thing, intending thereby to practise deception.

7. 'Injury' denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

8. 'Good faith' nothing is said to be done or believed in good faith, which is done or believed without due care and attention.

9. 'Complaint' means the statement orally or in writing to a Magistrate, with a view to his taking action that some person has committed an offence.

10. An "Investigation" is proceedings conducted by the Police.

An 'inquiry' means proceedings taken by a Magistrate or Court.

Abetment.—To abet=to assist in the doing of a thing.

A person abets the doing of a thing—

(1) when he instigates any person to do that thing;

(2) when he intentionally aids the doing of that thing;

(3) when he does an act which makes the doing of that thing easy ;

(4) when he enters into a ~~conspiracy~~ ^{conspiracy} to do that thing ;

In abetment, the person does not actually commit the crime himself, but helps to bring it about. ✓

General Exceptions.

Nothing is an offence, if it is done—

✓(1) by a person, who in good faith believes himself to be bound by law to do it ;

✓(2) by a judge acting judicially, in the exercise of the power given to him by law ;

✓(3) by accident or misfortune without any criminal intention, and when proper care and caution have been taken ;

(4) by a child under 7 years of age ;

(5) by a person who, is unsound of mind, at the time of doing it ;

- (6) by a person under the influence of intoxication, if the thing which intoxicated him was given to him without his knowledge or against his will ;
- (7) by a person to any person above 18 years of age, with his consent to suffer that harm ;
- (8) by a person under threats of instant death, except murder and offences against the state ;
- (9) so as to cause harm so slight that no person of ordinary sense would complain of such harm ;
- (10) in the exercise of the right of of private defence.

The Right of Private Defence.

It comes into existence when the aid of law cannot be obtained. It means a person can do everything to protect himself, but the force used should be proportionate to the injury avoided. ✓ It cannot be exercised when

✓(1) there is time to seek the help of the authorities and when (2) the injury is the result of the act done by a public servant in good faith, and which does not cause the fear of death. It continues as long as the danger to the body continues:—

✓(a) Death may be inflicted in the right of private defence of the body, if it is feared that the act will result in 1-death, 2-grievous hurt, 3-abduction, 4-wrongful confinement from which no recourse could be had to the authorities for release.

✓(b) Death may be inflicted in the right of private defence of property in the following cases.

1. Robbery.
2. House-breaking by night.
3. Mischief by fire.
4. Theft, mischief, or house trespass if

death or grievous hurt is likely to result. The right does not extend to other offences against property because in all other cases

the person harmed can get the help of the authorities against the offender.

CHAPTER V.

Offences against body.

Culpable homicide—

Homicide is the killing of a human being. Culpable means criminal. Whether the killing is criminal or not depends upon the intention, express or implied, of the person who kills. Culpable homicide is therefore divided into two classes—

- (1) Culpable homicide amounting to murder and
- (2) Culpable homicide not amounting to murder.

Culpable homicide means to cause death by doing an act which is likely or certain to cause death.

300—1. *Culpable homicide amounting to murder. It is murder*

- (1) if the act which causes death is done with *the intention* of causing death;

or (2) if a bodily injury is intentionally caused, which the offender knows to be likely to cause death;

or (3) if intentionally a bodily injury is caused, which the offender knows is sufficient to cause death in the ordinary course of nature;

or (4) if the act is apparently so dangerous that the offender knows it is likely to cause death.

2. Culpable homicide not amounting to murder.

If death is caused;

(1) under sudden and grave provocation

(2) by a mistake or accident;

(3) in the exercise in good faith of the right of private defence;

(4) in aiding in good faith a public servant in the discharge of his duty;

(5) by the person dying taking the risk of death voluntarily; it is culpable homicide not amounting to murder.

Hurt

A human being may not be killed, but may be hurt seriously or slightly. He may receive a blow which may confine him to bed for 20 days or he may be knocked down by a push. In the former case it will be seen, a more grave offence is committed than in the latter. Therefore, Penal Code divides the cases of hurt into two classes, (1) Simple hurt and (2) grievous hurt.

✓ **319 Hurt.**—If a person causes bodily pain, disease or infirmity to any person, he is said to cause hurt.

320 Grievous Hurt—The following hurts are known as grievous:—

1. Emasculation.
2. Permanent loss of the sight of either eye.
3. Permanent loss of the hearing of either ear.
4. Breaking of any limb or joint.
5. Permanent disfiguration of the head or face.

6. Fracture or dislocation of the bone or tooth.
7. Any hurt which endangers life or causes a person to be in bed for 20 days.

Under hurt or grievous hurt it is necessary that there must be pain or injurious consequences.

A person is not punishable for hurt or grievous hurt unless he has caused it voluntarily that is with the intention of causing it or with the knowledge that he is likely to cause it. In every case the state of the offender's mind at the moment the act was done must be considered. If hurt or grievous hurt is caused on grave and sudden provocation, the punishment should be light. A simple hurt may be caused either by (1) ordinary simple means such as a blow with the hand or a stick or (by) (2) dangerous means such as any instrument for shooting, stabbing or cutting, or by fire, or by poison, or by animal. In like manner a grievous hurt may be caused by (1) simple means such

as a blow which causes a permanent loss of the sight of an eye or dislocates a tooth or by (2) dangerous means such as any instrument for shooting, stabbing or cutting or by fire, or by poison or by animal. Hurt may therefore be divided into four classes.

(1) Simple hurt by simple means.

(2) Simple hurt by dangerous means.

(3) Grievous hurt by simple means.

(4) Grievous hurt by dangerous means.

Simple and grievous hurts are caused also with the object of committing other offences such as a 'extorting' property or confession or compelling restoration of property or stopping a public servant from doing his duty when they are punished with a heavier punishment.

CHAPTER VI.

339. Wrongful restraint.—Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which he has a right to go is said to wrongfully restrain that person,

For example A obstructs a path along which B has a right to pass which stops B from passing that way. A wrongfully restrains B.

✓340. **Wrongful confinement.**—Whoever wrongfully restrains a person so as to prevent that person from going beyond certain circumscribing limits is said to wrongfully confine that person *e.g.* A invites B to enter a room and then locks the room, and does not allow B to come out. A wrongfully confines B.

Every one is free to go wherever one pleases: the loss of this power means that there is a restraint placed upon the movement of a person by one who has no right to do so; and places the person so using the restraint in the place of an offender.

349. **Force.**—A person is said to use force to another, if by:—

- (1) his bodily power;
 - (2) by the use of any substance;
 - (3) by the movement of any animal,
- he causes motion or change of motion, to that other person or stops him from moving.

350. Criminal force.—If force is used to any person without his consent to commit any offence or to cause an injury fear, or annoyance to him, it is said to be "Criminal force".

351 Assault.—A person who by gesture or any preparation causes any person to believe that he is about to use criminal force, commits assault. There should be a threat of using criminal force, accompanied by a real or apparent power to carry it out at once. The essence of the offence is the effect produced on the mind of the person threatened. It is no offence to threaten a person with a stick from a distance.

359. Kidnapping.—Means to seize and forcibly carry away. It is of two kinds: kidnapping from British India, and kidnapping from legal guardianship.

360. To convey a person beyond the limits of British India, without his consent or without the consent of his legal guardian is to *kidnap that person from British India*.

✓383. **Extortion.**—If a person intentionally puts any person in fear of any injury to him or to any other and dishonestly induces such person to part with his property, he is said to commit *extortion*. In the case of extortion the will of the owner of the property is overpowered and he is compelled to part with his property. Any property, moveable or immoveable can be the subject of extortion.

390. Robbery.—Is only an aggravated form of theft or extortion. In all Robbery there must be either theft or extortion.—

(a) Theft is robbery, if to commit theft the offender causes or attempts to cause to any person death or hurt, or wrongful restraint, or fear of instant death or instant wrongful restraint.

(b) Extortion is robbery, if the offender at the time of the commission of the crime is in the presence of the person put in fear and commit extortion by putting

that person in fear of instant death or instant hurt or instant wrongful restraint, to that person or some other person, and induces him then and there to deliver up the thing extorted.

✓415. **Cheating.**—If a person by deceit, fraudulently or dishonestly induces a person to deliver any property to any person or to do an act or to omit to do an act which act or omission is likely to cause harm or loss to that person, he is said to cheat.

✓403. **Criminal misappropriation of property.**—If a person dishonestly converts to his own use any, moveable property, he commits criminal misappropriation of property.

✓405. **Criminal breach of trust**—If a person, being in any manner entrusted with property dishonestly converts it to his own use he is said to commit criminal breach of trust.

There can be no criminal misappropriation in the case of things which have been

361. To take or entice a minor under 14 if a male, or under 16 if a female, out of the keeping of the legal guardian of such minor, is *kidnapping from the legal guardianship*. The offence consists in the violation of the rights of the guardian. *doing*

✓362. Abduction — If a person is by force compelled or by deceit induced to go from any place, the person using such force or deceit is said to abduct that person. To make the offence of *abduction*, there must be force or fraud which is absent in the offence of *kidnapping*. In the case of *abduction* the offence is against the person abducted while in the case of *kidnapping* the offence is against the legal guardian. The offence of *abduction* can be committed against the person of any age. Kidnapping is sometimes practised in order to murder the person kidnapped, or to wrongfully confine him or to sell him as a slave, when it is punished more severely.

CHAPTER VII.

Offences against property.

These are divided into three classes:—

Firstly—those offences by which the owner is deprived of property
e.g. Theft, Robbery.

Secondly—those which injure or harm the property *e.g.* mischief.

Thirdly--those in which the owner's right to his property is disregarded with a view to commit a crime *e.g.*, Criminal Tresspass.

The simplest offence in the way of taking away the property of a person is theft.

378 Theft.—If a person with the intention of taking dishonestly the property of a person moves such property without the owner's consent from his possession, he is said to commit theft.

Only moveable property can be the subject of theft.

of worship or as a place for the custody of property, he is said to commit "house trespass."

445. House-breaking.—If a person who commits house trespass enters or leaves the house after the offence is committed:—

- (1) through a passage made by himself;
- (2) through a passage not intended by any person for human entrance or by climbing over a wall or building;
- (3) through any passage which he has opened but which the occupier of the house did not intend to open;
- (4) by opening any lock;
- (5) by using criminal force or assault, he is said to commit house-breaking.

443. Lurking house trespass.—If a person hides himself and commits house trespass unknown to the person who has a right to exclude or eject the trespasser from the place, he is said to commit "lurking house trespass."

CHAPTER IX.

Of attempts to commit offences.

511. Whoever attempts to commit an offence, and does any act towards the commission of it, shall be punished with transportation or imprisonment extending to half of the term provided for that offence. But where the punishment is that of fine, no such reduction is necessary

Before a crime is completed the offender passes through three stages.

(1) He intends the commission of the crime.

(2) He makes preparation to commit it.

(3) He makes an attempt to commit it. There is a great difference between the preparation and the attempt. *Illustration*—A woman wanted to commit suicide. She ran towards a well saying that she would fall into it. But before she reached the well she was caught by the people. Here the woman may be said to have prepared herself for the crime but she could not be convicted of having made an attempt to do it.

abandoned as in the case of sacred bulls, or food which is very often left behind on the roads or in railway carriages. But where thing is not given up by the owner, it is criminal misappropriation to keep it for one's use.

In the case of criminal breach of trust, the thing is given to a person for the purpose of being kept or used or dealt with for the benefit of another, but the person so entrusted converts it to his own use.

410. Receiving stolen property is declared a crime with the object of punishing those people who under the disguise of honesty help thieves to dispose of the property stolen. Three things are necessary to complete the offence, (1) the property in question must have been stolen property (2) it must have been dishonestly received and retained (3) the accused should have known it to be stolen property.

✓**391. Dacoity.**—When five or more persons, jointly commit or attempt to commit, a robbery, every one of them is said to commit dacoity.

If a murder is committed in the course of a dacoity, every one of the persons forming the gang, will be tried for murder and if found guilty punished with death or transportation.

CHAPTER VIII.

✓425. **Mischief.**—If with the intention of causing or knowing that it is likely to cause wrongful loss or damage to the public or to any person, any property, destroyed or injured it is ‘mischief.’

441. **Criminal Trespass.**—If a person enters into the property in the possession of another with the intention of committing an offence or to insult or to annoy or having lawfully entered into such property unlawfully remains there to commit an offence or to insult, or to annoy, he is said to commit ‘criminal trespass.’

442. **House Trespass.**—If a person commit criminal trespass by entering any place used as a human dwelling, or as a place

It is necessary that the criminal intention must last until the final act, which is a criminal attempt, is done. *Illustration.*—A man goes armed to a place to kill a man. But when he gets there he finds him absent. He cannot be charged with attempt to commit murder.

CHAPTER X.

Different kinds of Punishment.

Punishment is essential to enforce obedience to laws. If a criminal law is broken the sovereign steps in and seeks the punishment of the offender to prevent future injuries: but in the case of a civil proceeding the injured party is left to its discretion to seek redress for the injury done to him.

The following punishments are prescribed for several offences, by the Criminal Law in India:—

1. Death.
2. Transportation.
3. Penal Servitude.

4. Imprisonment:—

(a) Rigorous.

(b) Simple.

(c) Solitary confinement.

5. Forfeiture.

6. Fine.

7. Whipping.

8. Detention in Reformatories.

1. *The sentence of death* is not passed to avenge the murder that has been committed; its object is security of mankind and by the terrible nature of punishment to deter others from doing the crime. It is inflicted, where there are no relieving circumstances, on the offender (1) who has waged war against the king (2) who has abetted the committing of mutiny in the army or navy (3) who by giving false evidence has got an innocent person convicted and executed (4) who has been guilty of culpable homicide amounting to murder (5) who has abetted the suicide of a minor under 18, of an insane or intoxicated person (6) who as a life-convict in attempting the murder of a person has caused hurt (7) who has committed murder in committing dacoity.

Transportation means carrying from one place to another. Under the punishment of transportation a criminal is taken from India to Andaman Isles which have been made a penal settlement for India. Transportation for life means transportation for 20 years.

Penal servitude is a substitute for transportation where the criminal is an American or a European. He may be sent abroad to a penal settlement or kept in his own country in a jail and under proper discipline.

Imprisonment is loss of liberty. A criminal under the punishment of imprisonment is generally confined in a jail. If the imprisonment is *rigorous* he is made to grind corn, dig the earth, carry water, do the latrine-work: if it is *simple*, he is not given any work. He may learn any profession if he shows his willingness to do so. *Solitary confinement*, whenever it is inflicted, forms part of a rigorous imprisonment. It must not exceed 14 days at a time, and before the repetition of it there should be an interval of at least 14 days. But where the term of

imprisonment does not exceed 3 months, solitary confinement should not exceed 7 days in one month, and should not be repeated until an interval of 7 days has elapsed.

Forfeiture of property takes place only (1) when the offender has waged or tried to wage war against the king (2) when he has collected arms, and ammunition with the intention of waging war against the king.

Fine is in most cases inflicted as an additional punishment to give compensation to the party injured and as a fair price of time and trouble devoted by the State to redress grievances of the complainant. Whenever therefore the offence is to be punished with imprisonment and fine, only fine must not be inflicted for it would make the sentence illegal. For example in the offence of counterfeiting coins, the offender must be punished with imprisonment and fine both. If fine only is inflicted the sentence is illegal. Where an offender, punished with imprisonment and fine is unable to pay the fine, he is punished with a further imprisonment

for the non-payment of it. The period of this imprisonment must not exceed one fourth of the period of imprisonment sanctioned by law for the offence. The nature of this imprisonment will depend on the nature of the imprisonment for the offence; if the offence is punishable with rigorous imprisonment, the imprisonment in default of payment of the fine will also be rigorous: if simple, simple. If the offence is punishable with fine only, the imprisonment must be simple and on the following scale:—

- (1) fine not exceeding Rs. 50, not exceeding 2 months
- (2) fine not exceeding Rs. 100, not exceeding 4 months
- (3) in any other case, not exceeding 6 months.

The imprisonment in default of fine ends the moment the fine is paid or is recovered by process of law.

Whipping.—It is inflicted to make the punishment degrading and therefore deterrent in the case of ordinary offenders.

But in the case of juvenile offenders it is considered by itself sufficiently effective to prevent the repetition of crime. In cases of theft; extortion by threat, dishonestly receiving stolen property; and lurking house-trespass the offender is punished with whipping either in lieu of any punishment to which he is liable or in addition to it. Only Presidency and first class magistrates are empowered to inflict this punishment; but a Magistrate of second class when he has been specially empowered by the Local Government may also inflict it. The punishment in no case should exceed 30 stripes. It must not be inflicted by instalments. If a person is found unfit to undergo the remainder of the sentence of whipping, it should be stopped finally, and may be entirely remitted or imprisonment may be given in lieu of it.

Detention in Reformatories.—This is done in the case of juvenile offenders that is those who are under age. This is considered desirable in order to keep them away from the society of confirmed criminals.

They are taught industries and reading and writing during the period of their detention, so that when they go out they find themselves well armed to resist temptation to commit crimes.

CHAPTER XI.

Criminal Courts.

1. The criminal law of India is divided into two parts, (1) the Penal Code and (2) the Criminal Procedure Code. The Penal Code gives the definition of the offences and the Criminal Procedure Code lays down the principles governing (1) the arrest of the accused (2) the conduct of the Police (3) the trial of the accused. A knowledge of the criminal procedure code is therefore necessary for the impartial administration of justice and to bring the wrong-doers before the criminal courts.

2 Criminal Courts in British India are divided into five classes.

1. Courts of Sessions.
2. Presidency Magistrates.

3. Magistrates of the 1st class;
4. Magistrates of the 2nd class.
5. Magistrates of the 3rd class.

In addition to these there are High Courts to exercise directly criminal powers and to supervise the work of the lower criminal Courts. In the Native State, the courts of Presidency Magistrates do not exist: but otherwise the division of criminal courts into various classes is based on the same principles as are obtainable in British India.

A province is divided into several divisions and each of these divisions is placed under a court of *Sessions*.

Presidency Magistrates courts are found only in presidency towns, ^{and carry the power of a first class magistrate}

A *High Court* is generally established at the capital of a presidency, and is invested with highest powers.

A *District Magistrate* is an officer in charge of a district who is invested with the powers of a magistrate of the 1st class.

Benches of Magistrates come into existence when two or more magistrates sit

together at a trial and exercise the powers either of 1st, 2nd or 3rd Class Magistrate according to the orders of the Local Government.

Powers of different Criminal Courts.

1. *A High Court* may pass any sentence under the law.

2. *A Sessions Judge* may pass any sentence under the law: but a sentence of death passed by him must receive confirmation from the High Court before it is carried out.

3. *A Magistrate of the 1st Class*—Imprisonment 2 years. Fine 1,000 Rs. Solitary confinement, as authorised by law. Whipping.

4. *A Magistrate of the 2nd Class*—Imprisonment 6 months. Fine 200 Rs. Solitary confinement as authorised by law. Whipping (if specially empowered).

5. *A Magistrate of the 3rd class*—Imprisonment 1 month. Fine 50 Rs.

This gradation of the criminal courts seems necessary in the light of the gravity of the offences. If an offence is more complicated and serious it requires a more experienced and more learned magistrate to understand the circumstances attending it and to pass a clear judgment; but if it is a simple offence such as that of Assault, any magistrate with ordinary intelligence can satisfactorily dispose it of. It is on this ground that offences like murder are tried by a magistrate of the 1st class only or by Sessions Judges and lighter offences by magistrates of 3rd class.

Magistrates in addition to their duties of trying cases have also been given powers to take steps for the prevention (1) of the disturbance of public peace *e.g.*, the power of calling out the military to disperse rioters. (2) of public nuisance *e.g.*, obstruction of a public path: keeping of explosives in an unsafe place (3) to make orders for the maintenance of wives and children (4) to order security to be given to keep the

public peace *e.g.*, by persons who are owners of printing presses publishing seditious matter (5) to prevent cruelty to animals.

CHAPTER XII.

The Police.

To make the work of arrest easy the law requires every person to help a magistrate or a police officer (1) in preventing the escape of a person whose arrest is deemed necessary, and (2) in the prevention of a breach of the P. peace (3) and in the prevention of injury to any railway, canal or public property.

An arrest is generally made under a warrant, which if required is shown to the person arrested. A police officer is permitted to enter any place where he suspects the person to be arrested to be. On arrest the arrested person may be searched and all articles found on him may be placed in safe custody. Handcuffs need only be used when from the serious nature of the crime or the character and behaviour of the accused it is thought necessary to use such restraint.

A police officer may arrest without a warrant any person,

- (1) concerned in any cognisable offence
- (2) in possession of implement of house-breaking
- (3) who is a proclaimed offender
- (4) in possession of stolen property
- (5) who is a deserter
- (6) who can give no satisfactory account of himself
- (7) who is an habitual offender.

Private persons may also arrest any person who commits a non-bailable and cognisable offence and send him without delay to a police officer. The person arrested must not be detained in custody for more than 24 hours, within which time he must be placed before a magistrate.

When an offence is committed in the presence of a magistrate he may himself arrest the offender, but he cannot in that case try him.

To compel the attendance of the accused, in some cases (1) Summons is issued ordering him to appear on a certain day in the court; while in others (2) a warrant of arrest is issued. To avoid unnecessary hardship to the accused, the court issuing a warrant of arrest directs the police officer to release him if he executes a bond with sufficient sureties for his attendance before the court on the specified day.

When information about the commission of a cognisable offence is given to a Police Officer, he reduces it to writing, and gets it signed by the informant. In case of non-cognisable offences, a police officer makes a note of it in his book and refers the complainant to a magistrate. A police officer does not proceed to investigate in case of noncognisable cases unless he receives an order from a magistrate; but in cognisable cases he sends a report to the magistrate and proceeds to investigate. He may require the attendance of any person acquainted with the circumstances of the case. If the investigation cannot be completed within 24

hours he should present the accused before a magistrate and demand extension of time for the detention of the accused in custody. If no evidence is forthcoming to justify the placing of accused for trial before a magistrate, the accused will be released.

CHAPTER XIII.

Trial

A magistrate to whom complaint is made, at once examines the complainant on oath and takes down his statement. If he is not satisfied as to the truth of the complaint, he either inquires into the case himself or sends it to a police officer for investigation. The complaint is dismissed if the result of inquiry or investigation does not show sufficient ground to proceed against the accused. But in the case of sufficient grounds, a summons or a warrant is issued against the accused ordering him to present himself before the court on the specified day.

Procedure in Summnos Cases.

When the accused appears before the Magistrate he is told the particulars of the

offences of which he is accused and is asked if he has any defence to offer. If the accused admits that he has committed the offence he is convicted: but if he does not, the hearing of the complainant and his witnesses begins. The accused and his witnesses are heard after the complainant and his witnesses have made their statements. If on the evidence taken, the magistrate finds the accused not guilty he acquits him and if he finds him guilty passes sentence upon him. No charge is framed in summons-cases. If the complainant absents himself, without cause on the day fixed for the appearance of the accused, the magistrate acquits the accused.

Procedure in Warrant-cases.

When the accused appears or is brought before a magistrate, the complainant is heard and his evidence taken. If the magistrate finds that no case has been made out, he discharges the accused. But if he finds that there are grounds to believe that an offence has been committed, he frames a

charge against the accused. The charge is read and explained to the accused and he is asked if he is guilty or not. If the accused pleads guilty he is convicted. If he pleads not guilty, he is asked which of the prosecution witnesses he wishes to cross-examine. The evidence of the remaining prosecution witnesses is then taken. After which the accused is called to produce his evidence. If the accused is found not guilty he is acquitted; otherwise he is convicted. If a complainant absents himself on the day fixed for the hearing, the magistrate goes on with the case, and does not acquit the accused.

Some criminal cases are declared compoundable. They are always instituted by presenting a complaint and seek redress for the wrong done to the complainant either by compensating him with the payment of money or by gratifying him in any other manner. For example in cases of hurt, assault, defamation the offence may be compounded by the person hurt, assaulted, or defamed. When the complainant declares

himself ready to accept the terms offered, the offence is compounded, and the magistrate acquits the accused.

CHAPTER XIV.

Evidence.

A Criminal case is generally begun by the Police who are the servants of the King. It is headed "Emperor *versus* the Accused." On behalf of the Emperor, the public prosecutor, who is generally a pleader is appointed to conduct the case; and the accused if he can afford it, also engages a pleader to defend him.

When the hearing begins, witnesses are called by both the parties. They are in their evidence directed by court to state only *relevant facts*, that is those facts which are connected with the case before the Court as being the occasion, cause or effect of the offence for which the accused is being tried. Any matter not connected with the case is not heard for it is feared, that it would unnecessarily prolong the case. Facts not connected with the case are called *irrelevant*.

Evidence is divided into two kinds; (1) Documentary Evidence and (2) Oral Evidence. In case of the documentary evidence, it is necessary that genuine documents should be produced in the Court for the inspection of the magistrate and the parties concerned.

2. As to oral evidence, it is either direct or indirect. Under indirect evidence, comes hearsay evidence which means that what the witness says is not the result of his own knowledge but what he has heard from others. Hearsay evidence is therefore not allowed in law.

When a witness is present in the Court he is examined in the first case by the party calling him; and it is called his Examination-in-Chief. The opposite party then examines him again to prove that he is not worthy of belief, or that he has not told the truth, which is called his cross-examination. After the cross examination the party who called the witness, *re-examines* him to explain facts over which the cross examination has thrown a shade of doubt, and it is known as re-examination.

Any question that suggests an answer which the party asking the question wishes to receive is called a *leading question*. For example (1) was not A beaten with a stick? (2) Did you see blood come out of his head? (3) Did the Doctor say it was a grievous hurt? Leading questions are not allowed in examination-in-chief or re-examination but they may be asked in cross-examination.

3. An accused person either makes a confession or pleads not guilty. If he makes a confession, the magistrate tries to find out whether it is made voluntarily or on account of some inducement, threat or promise of help from a person in authority. In case the confession is found to have been made either to a police officer or under the influence of any person in authority it is not admitted by the court as a valid confession. A confession to be admissible must be made in the presence of a magistrate. But if anything connected with the case is found as a result of information received from accused when he was in the custody of a police officer it may be proved. For example if the accused

when he is in custody tells a Police-officer that the knife with which he committed murder is buried near a particular tree, and the knife is found from the place pointed out, the information may be used against the accused, and treated as a part of his confession.

CHAPTER XV.

The Civil Procedure.

There are certain acts which fall both under the Civil and the Criminal law e.g, assault; defamation; Trespass; negligence. In such cases it is left to the party harmed to select his course. He may either prosecute the offender in the Criminal Court or file a suit against the party in a Civil Court and claim damages. An act therefore when it breaks the private rights of an individual is a tort: but if it affects his public right it is a crime. As an individual the person aggrieved claims damages only while as a member of society, wrong done to him is punished by the State. Tort means a breach of duty between citizens

giving rise to a civil cause of action. If an offender is fined by a criminal court for assault, the punishment is no bar to a civil action against him for damages.

The Civil Law deals with the rights and duties of individuals in relation to each other. Society comes into existence when human beings begin to live together and agree to sacrifice a certain portion of their independence for the well-being of the whole constituting it. They enter into an implied contract with each other to do something or to forbear from doing something in the interest of others. A breach of contract gives rise to a civil suit which is heard by an officer termed a "*Judge*."

The document which explains the cause of the party injured is called a "*Plaint*" and that which contains the explanation of the other party is called a "*Written statement*". From the comparison of the two documents, a judge finds out the points on which the parties differ, and these are termed the "*issues*". A person presenting a plaint is

called a '*Plaintiff*,' and a person presenting a 'written statement' is called a '*Defendant*.' A person whose presence the court deems necessary is summoned in the usual way. When the case has been heard the judge pronounces a *judgment*, and gives effect to his opinions by passing a '*decree*. The party in whose favour a decree is passed seeks the assistance of the Court to get for him what the decree has given to him, that is to say he applies for the *execution of the decree*. When the decree has been realised, that is when the things ordered is obtained by the decree holder it is said to have been *executed*.

CHAPTER I.

Sources of Hindu Law- The chief sources of Hindu Law are:-

(1) the Srutis which are believed to contain the very words of God.

(2) the Smiritis which are those orders of God which the Rishes have handed down to the world.

(3) customs

(4) Religious commentaries.

(5) Judicial decisions.

Schools of Hindu Law -

There are two chief schools of Hindu Law - the Mitakshara and the Daya Bhaga.

The Mitakshara prevails through out India except Bengal where Daya Bhaga is followed. The sub schools

under Mitakshara are -

Benares school - Mithila school (Bihar and Orissa) - Maharashtra school (Deccan) - Dravida school (Madras) - Mayukha in Gujrat.

Mitakshara school is said to be the orthodox school

and Daya Bhaga the reformed school of Hindu Law. The Bengal school differs from the Mitakshara in two points (1) the law of inheritance (2) and the Joint Family system.

A Hindu family is supposed to be governed by the law of the school which prevails at the place of his residence. If it moves from one province to another it is presumed that it carries with it its own personal law. But it may

adopt the law of the school which is followed at the place to which it has migrated.

The Hindu Law applies to Hindus only, and also to Jains and Sikhs. The Brahmins, the Kshatriyas, the Vaisyas are said to belong to the twice born classes. The second birth is said to consist in the study of the Vedas and the performance of Sanskars or sacraments.

CHAPTER II.

Marriage.

Marriage under Hindu Law is a holy union for religious rites. It is not a contract. A marriage brought about during the minority of the parties is not invalid; but a marriage brought about by force or deceit is invalid.

Forms of marriage. The Hindu law recognised 8 forms of marriage, 4 of which were approved forms and 4 unapproved. The only forms

of marriage now recognised are (1) the Brhama form and (2) the Asura form. Where the father of the bride gives her in marriage without receiving any consideration from the bridegroom, the marriage is called Brahama. But where he receives such consideration which is called bride's price (Sulka) the marriage is called Asura. The other forms of marriage are Daiva, Arsha, Prajapatya, Gandharva, Rakshasa, Paisacha. A Hindu may marry any number

of wives although he has a wife or wives living. A woman cannot marry another while her husband is alive. The marriage of Hindu widows is now legalised by the legislature.

Who may give in marriage.

The sastras order the marriage of a female before she attains proper age and therefore lay down rules for guardianship in marriage. The following persons are qualified to give in marriage (1) the father (2) the

paternal grandfather(3)the
brother(4) other paternal
relations (5) the mother.
There are no rules as to
who may give a boy in mar-
riage as the sastras believe
that no male will marry
until he attains the proper
age. The duty of giving
the girl in marriage rests
with the father; but a mar-
riage does not become in-
valid if it has been cele-
brated without force or
fraud and with all the
necessary ceremonies with

the consent of the mother and without the consent of the father.

Identity of caste. The parties to marriage must both belong to the same caste; otherwise the marriage is invalid. A marriage between a male of a higher caste and a female of a lower caste is valid.

Prohibited degrees of relationship. Marriage of persons within the prohibited degrees of relationship is invalid. The

following are the rules regarding prohibited degrees:-

- (1) A man can not marry a girl of the same gotra.
- (2) A man can not marry a girl who is his Sapinda. Descendants upto the 7th degree through males and upto the 5th degree through females are Sapindas.

Marriage ceremonies. There are two ceremonies essential to the validity of a marriage, (1) Datta homam or offerings to the sacred

fire and (2) Saptpadi that is taking of seven steps by the bridegroom and the bride jointly before the sacred fire. The marriage becomes completed when the 7th step is taken; till then it is revocable. If the family is joint marriage expenses are paid from the common funds. Divorce is not allowed in Hindu Law. The marriage tie is indissoluble as it is a religious act. It may be allowed in those castes where it is permitted by

custom.

Duties of husband and wife.

The wife is bound to live with her husband and to obey him. The husband is bound to live with his wife and to maintain her. The husband is the lawful guardian of his minor wife and is entitled to require her to live with him however young she may be. On the death of the husband the guardianship of the wife if a minor goes to the relations of the husband.

CHAPTER III

ADOPTION.

Adoption is allowed under Hindu Law because it is believed that there is no Heaven for a sonless man. The Mohammedan and English laws do not recognise it. The ancient Hindu law recognised five kinds of adopted sons; but the modern Hindu Law recognises only two, the Dattaka and the Kritrima kinds. The Dattaka Form is in use all

over India. The Kritrima Form is found in Mithila only. The object of adoption is to secure spiritual benefit to the adopter and his ancestors by the offering of funeral cakes and libation of water to the souls of his adopter and his ancestors. The other object is to secure an heir to continue his line in the world.

The essentials of a valid adoption are:-

1. That the person adopting is capable of taking in adoption lawfully
2. That the person giving in adoption is capable of lawfully giving in adoption.
3. That the person adopted is capable of lawfully being taken in adoption.
4. That the adoption is completed by actually giving and receiving.
5. That the ceremony called the Datta Homam has been performed.

Who may adopt. Every male may adopt if he is competent to do so. A wife can adopt to her husband but no other female can. A wife cannot adopt during her husband's life without his consent and even after his death she can only adopt if he has authorized her to adopt. But in some parts of India she is allowed to adopt without his authority also after his death e.g. in Madras and Bombay Presidencies. The adoption must

be made to her husband.

A Hindu who wishes to adopt must be of sound mind, and must have attained the age of discretion, though a minor and must not have a son, grandson, or great-grandson, natural or adopted living at the time of adoption. It does not matter if the adopter is unmarried or a widower, or has a wife pregnant at the time of adoption.

A wife can adopt a son during her husband's life

time only with his express consent. In Bengal and Benares a widow cannot adopt without the express authority of the husband; while in Bombay and Madras she can adopt without his express authority. In case the husband is a member of a Joint family a widow can adopt with the consent of the coparceners only. Where there are two or more widows only the senior widow has the right to adopt. The authority to adopt may be

given in writing or orally. If it is in writing it must be registered. A widow can adopt in the following cases only (1) If her husband has died without leaving any son (2) If her husband has left a son and the son has died leaving her (his mother) as his nearest heir. In both the cases the state vests in her and gives her the right to adopt to her husband.

Who may give in adoption.-

Only the father and the

mother of a boy can give him in adoption. The mother cannot give in adoption, if the father is alive without his consent, but if he is incapable of giving consent, she may give in adoption without asking him. The power to give in adoption cannot be given to another person. The person given in adoption must be of sound mind and have attained the age of discretion.

Who may be adopted- (1) Only

a Hindu may be adopted.

(2) Only a male may be adopted and not a female.

(3) The adopted person must belong to the same caste as his adopting father.

(4) He must not be a boy whose mother the adopting father could not have legally married.

(5) He must be adopted before he is invested with the sacred thread but in Bombay Presidency a person

may be adopted at any age.
An only son may be adopted
but an orphan cannot.

Dwayamushyanva or son of
two fathers. - Where a
person gives his son to
another under an agreement
that he should be consider-
ed to be the son of the
natural and adoptive fathers,
the son so given in adoption
is called Dwayamushyanya.

Ceremonies relating to
adoption. - The ceremonies
relating to adoption are:-
(1) the physical act of

giving and receiving with the intention of transferring the boy from one family to another.

(2) The Datta Homam or sacrifice to fire. The act of giving and taking is essential to the validity of adoption. No religious ceremonies are necessary in the case of Sudras or Jains and in the Punjab.

(3) There must be free consent to the adoption of the person giving and of the person taking in adop-

tion. A valid adoption once made cannot be cancelled.

Results of Dattake adoption.

Adoption transfers the boy adopted from the natural to the adoptive family. He gets all the rights in the adoptive family of a natural born son. He loses all his rights in the natural family. If the adoptive family is a joint family he becomes a member of the coparcenary from the time of his adoption. But the adoptive

father may dispose of his separate property by will or gift. If a natural son is born to the adoptive father after the adoption, the adopted son will get one-third of the estate in Bengal, one-fourth in Benares, one-fifth in Bombay. It takes away from the adopting widow the estate of the deceased husband and passes it on to the adopted son as the next heir of the deceased. This is known as devesting the

estate of inheritance. But the widow is entitled to maintenance out of the estate. If the adoption is invalid the adopted son does not acquire any right in the adoptive family; but his right in the natural family remains undisturbed.

Kritima adoption. - This is found only in Mithila. In this form both a female and male can adopt. No ceremonies are necessary but the consent of the adopted son is essential to the validity

of adoption. The adopted son does not lose his right in the natural family.

CHAPTER IV.

Maintenance.

Manu says "The aged parents a virtuous wife and an infant child must be supported". A Hindu is legally bound to support his wife, his minor sons, his unmarried daughters, and his aged parents, whether he possesses any property or not. The obligation to maintain is personal in character and arises from the existence of relationship between the parties. The manager of a joint fami-

ly is under an obligation to maintain all members of the joint family, their wives and their children, and in case of the death of a male member his widow and his children. The obligation arises because the manager is in possession of the family property. An heir is also legally bound to maintain out of the estate which descends to him all those persons whom the deceased proprietor was bound to maintain.

Persons entitled to maintenance. The following are entitled to maintenance :--

Sons, daughters, grandchildren, parents, disqualified heirs, illegitimate sons, wife, widow.

Sons. A father is bound to maintain his minor sons, but not his adult sons. But if the property is joint property he is bound to maintain his adult sons also.

Daughters. A father is bound to maintain his unmarried daughters. A daughter on

her marriage ceases to be a member of her father's family and is therefore not entitled to maintenance from him.

Grand-children. A grandfather is under no obligation to maintain his grand-children.

Parents. A son must maintain his aged parents.

Disqualified heirs. If a son or other heir is excluded from inheritance on account of some disability he and his family are entitled to maintenance out of the pro-

perty inherited.

Illegitimate sons and daughters. Illegitimate sons must be maintained but not the illegitimate daughters.

Wife. A wife is entitled to be maintained by her husband whether he possesses property or not. The obligation to maintain arises from the existence of relationship & is independent of the possession of property. A wife's first duty is to submit to her husband and to remain under his roof and protection.

She is not entitled to separate maintenance unless she proves that by reason of his misconduct, or for other justifying cause she is compelled to live away from him. Unkindness not amounting to cruelty, taking of second wife, ordinary quarrels are not sufficient causes to entitle a wife to claim separate maintenance. But if the husband kept a concubine in the house and treated her with cruelty so as to endanger her life she may claim

separate maintenance. But an unchaste wife cannot claim maintenance. A wife is entitled to maintenance even if her husband changes his religion.

Widow. A widow who does not succeed to her husband's property as heir is entitled to maintenance out of her husband's separate property and also from the joint family property. A widow is not bound to live with her husband's family and she does not lose her right to main-

tenance by going to a reside
elsewhere. But she must not
be unchaste and lead an im-
proper life. The amount of
maintenance is determined by
taking into consideration
the value of the estate and
the position of the husband
and the widow and the amount
of Stridhan if it is of a
productive nature. But the
clothes and jewels will not
be taken into account. The
amount may be increased or
diminished according as the
circumstances of the family

change. Maintenance is not a charge upon the estate of the deceased husband and a bona fide purchaser may purchase the estate free of such charge. Debts contracted by the husband must be paid first if they were incurred for the benefit of the family. In an undivided family, a widow is entitled to live in the family dwelling house. But if the house is sold, a suitable residence should be found for her. A right to future

maintenance cannot be transferred or attached but the right to arrears of maintenance can be.

CHAPTER V.

Stridhan.

Stridhan means literally "a woman's property". Property obtained in the following ways is Stridhan :--

1. By gift before nuptial ~~man~~ fire,
2. by gift at the bridal procession,
3. by gift through affection by her father-in-law,
4. by gifts from her father or mother or brother,
5. by gifts from her husband's relations after marriage.

Property received by a woman either through

inheritance or partition is not her Stridhan as it does not descend to her heirs but goes to the heirs of her husband. All the property acquired by a Hindu female is not her Stridhan; only the property acquired in the manner mentioned above is her Stridhan. The distinction between the property which is her Stridhan & that which is not is important in two ways. First as regards the power of alienation. If the property is Stridhan, it will pass to her heirs, i.e., to

her unmarried daughter,
daughter, and daughter's
issues, otherwise it would
go to the heirs of her hus-
band. Over her Stridhan a
female has absolute power;
she can sell it or give it
away to whomsoever she may
like. An immoveable proper-
ty given by her husband as
an absolute gift to his wife
is her Stridhan and she has
got full power over its dis-
posal; but if the gift is
not absolute then her power
over it is limited and she

cannot dispose it of without his consent. Property purchased by a woman with her Stridhan is her Stridhan. During maidenhood a Hindu female can dispose of her Stridhan of every description at her pleasure; during the lifetime of her husband a wife can dispose of only that kind of Stridhan which is called Saudayika, i.e., gift from relations; but not the property which is given by the husband; during widowhood she can dispose of

from whom she inherited it.
A Hindu wife is competent to contract but her liability is limited to her Stridhan.

Woman's property

The only females that can inherit property of a male are- (1) the widow, (2) daughter, (3) mother, (4) father's mother, (5) father's father's mother. They take only a limited interest in the property and on their death the property passes to the heirs of the males from whom they inherited it. But in Bombay

the daughter takes absolutely. The heirs of the last owner, who would succeed to the property on the death of the widow or the female heir are called reversioners. A widow is the owner of the property inherited by her and she completely represents it. But her powers over its disposal are limited. Her power over the income from the property is absolute; she can dispose it of in any way she may like. She is not bound to make any

savings. To sell any immoveable property she must show (1) legal necessity, such as benefit to the soul of her dead husband or any worldly necessity, (2) the person taking the property must prove that he made inquiries into the necessity & honestly believed that it existed. The burden of proving the necessity lies on the person who buys or mortgages the property from the widow. She may dispose of the whole of the property

with the consent of the reversioners. Her power in the management of the state is like the power of a manager in the state of an infant. She can be stopped from committing waste or injuring the property by a reversioner.

CHAPTER VI.

Gifts.

Gift consists in the giving up of one's right in property and the creation of the right of another. This creation of the right is completed on the acceptance of the gift by that another but not otherwise. A hindu can dispose of by gift his separate or self acquired property, subject to the claims of those who are entitled ^{to} be maintained by him. Where the family is

joint no member of the joint family can dispose of the property not even his share by gift. Under the Hindu law it is not necessary that a gift be in writing but it is necessary that the delivery of the possession of the subject of the gift should be made by the donor to the donee. But this law has been modified by the British law and now for the purpose of making a gift of immoveable property the transfer must be made by

a registered instrument signed by the donor and attested by two witnesses. Delivery of possession is not necessary under the British law. But in the case of moveable property the transfer may be effected by a registered instrument or delivery of possession. A gift cannot be made to a person who was not in existence at the date of the gift. A gift is not valid because the donor reserves the use of income from the

property for his life. If a gift is burdened with a condition absolutely stopping the donee from alienating^{giving it} or from partitioning it, the condition is considered invalid but the gift good. A gift to which an immoral condition is attached remains good and the condition is declared void. If a gift is made to a class of persons some of whom are capable of taking while others are not, it is valid as regards those who are capable of taking &

invalid as regards others.

A gift once completed cannot be revoked unless it was obtained by fraud or undue influence. A trust can be created by a writing in case of immoveable property signed by the author of the trust and registered; and in case of moveable property by delivery of the property.

CHAPTER VII.

Minority & Guardianship.

Under Hindu Law minority ends with the 15th or 16th year; but according to the British Law it ends on the completion of the 18th year and where a guardian has been appointed by the Court of Wards on the completion of the 21st year.

Guardians are divided into three classes:-

1. Natural guardians.
2. Guardians appointed by a

a father by will.

3. Guardians appointed by the District or High Court.

Natural Guardians. The

father is the natural guardian of the person & property of his minor children. Next to him comes the mother unless the father has appointed another person. Failing the parents the court may appoint a paternal male relation and in his absence a maternal relation as a guardian. The Court has no power to appoint a guardian

of the minor whose father is living and is fit to be a guardian. If the minor is a member of the joint family of which the father is a manager the father is entitled to manage the minor's interest in the property. After the father's death the management passes to the eldest son as a manager. The mother is not entitled to the custody of the joint property but she is entitled to the custody of the person and

the separate property of the minor. If all the sons are minors the court may appoint a guardian until one of them attains majority. The husband is the lawful guardian of his minor wife and is entitled to require her to live with him however young she may be unless there is a custom to the contrary. The mother is the lawful guardian of her illegitimate children. In the case of loss of caste, change by parents

of religion the court should do what it thinks to be in the interest of the child in each case.

Powers of natural guardian.

The natural guardian of a Hindu minor has power to mortgage or sell any part of the property in case of necessity or for the benefit of the estate. He can enter into contracts and do all other acts reasonable and proper for the benefit of the property and for the advantage of the minor.

He can not bind the minor or his property for the purchase of immoveable property by a contract.

The act in order to bind a minor must be done in the capacity of a guardian. He may enter into a compromise on behalf of his minor.

Guardians appointed by will.

A Hindu father may by word of mouth or writing appoint a guardian for his children so as to exclude the mother.

A mother can not appoint a guardian by will. Such

guardian will act subject to the restrictions imposed by the will.

Guardians appointed by Courts. The District court or the High court can appoint a guardian to the person and property of the minor, provided the property is the separate property of the minor. He can ^{not} alienate the property without the previous permission of the court. A court may appoint in the case of joint family the manager of the

family, guardian to watch the interest of the minor member.

A guardian who has been deprived of the possession of the minor may proceed by a suit against the person in wrongful possession of the ward.